



July 13, 2015

Honorable Shoshana Grove  
Secretary  
Postal Regulatory Commission  
901 New York Avenue, NW, Suite 200  
Washington, DC 20268-0001

Dear Ms. Grove:

Pursuant to 39 U.S.C. § 407(d)(2), and consistent with Order No. 1865 granting the Postal Service's Motion for Reconsideration of Order No. 1822, PRC Docket No. CP2013-77, the Postal Service is providing copies of instruments executed by the Postal Service and a foreign postal operator regarding EMS. The Postal Service has marked the non-public versions of the documents as "Confidential" and "Non-Public" because the documents contain information considered confidential and commercially sensitive by the affected postal operator and the Postal Service.

The Postal Service considers certain portions of the documents to be protected by 39 U.S.C. § 410(c)(2) and thereby not subject to mandatory disclosure under the Freedom of Information Act (FOIA). Further, the documents contain the commercial information of the affected postal operators, and as such, certain portions of the instruments are subject to protection under Exemption 4 of the FOIA. Consequently, we have attached an application for non-public treatment of the documents under 39 C.F.R. § 3007.21. In addition, we respectfully request that the Postal Regulatory Commission coordinate with us in the event that any of the documents become subject to a FOIA request, so that we can engage in appropriate consultations with the affected postal operator.

Please feel free to contact me if further information would be helpful.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony Alverno".

Anthony Alverno  
Chief Counsel  
Global Business & Service Development

Enclosures

## **APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the enclosed EMS instruments executed by the Postal Service and a foreign postal operator regarding EMS(the “Instrument”). The Postal Service is transmitting the Instruments to the Postal Regulatory Commission (“Commission”) in accordance with 39 U.S.C. § 407(d) and consistent with Order No. 1865 granting the Postal Service’s Motion for Reconsideration of Order No. 1822, PRC Docket No. CP2013-77, filed on September 19, 2013. The unredacted Instruments are being filed under seal, while redacted copies are included as an enclosure to this transmittal. The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

**(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);**

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(3); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment

competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).<sup>1</sup> Because the portions of materials filed non-publicly fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

**(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

The Postal Service believes that the postal operator that is a sender and/or receiver of the Instruments is the only third party with a proprietary interest in the materials. Due to language differences, cultural sensitivities, and intricacies of the Postal Service's relationships with the affected foreign postal operator, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operator.<sup>2</sup> The Postal Service identifies as an appropriate contact person Haley McKittrick, International Postal Affairs, United States Postal Service. Ms. McKittrick phone number is (202) 268-4315, and her email address is Haley.E.McKittrick@usps.gov. Through the Table of Differences in the main

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<sup>1</sup> The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

<sup>2</sup> The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's response might be construed as beyond the scope of this exception, the Postal Service respectfully requests a waiver that would allow it to designate a Postal Service employee as the contact person under these circumstances, in light of the practical considerations outlined herein.

instrument, the Postal Service has already informed the counterparty, in compliance with 39 C.F.R. § 3007.20(b) about the nature and scope of this filing and about the postal operator's ability to address any confidentiality concerns directly with the Commission.

**(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;**

As required by 39 U.S.C. § 407(d), the Postal Service is transmitting documents concerning EMS service with foreign postal operators that are agencies of foreign governments. The documents transmitted consist of Instruments that define the terms on which the Postal Service and the relevant operators exchange Express Mail Service (EMS) items under the EMS Cooperative Pay-for-Performance Plan, including rate tier information. The Postal Service maintains that the redacted portions of the documents should remain confidential.

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

If the information that the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Competitors could use the information to undermine the Postal Service's position in negotiations, as well as the position of the foreign postal operators that are senders or receivers of the Instruments. Competitors could also use the identity



of the relevant foreign postal operators to target those countries for business to the detriment of the Postal Service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

**(5) At least one specific hypothetical, illustrative example of each alleged harm;**

Harm: Foreign postal operators could use the rate and discount information to undermine the Postal Service's position in negotiations concerning bilateral EMS charges.

Hypothetical: The rates and discount amounts are disclosed to the public.

Foreign postal operators obtain the information and use it to their advantage in negotiating bilateral EMS charges with the Postal Service in an effort to lower the rates charged for delivery of EMS in the United States.

Harm: Foreign postal operators could use the rate and discount information to undermine the position of the foreign postal operators that are senders or receivers of the Instruments in negotiations concerning bilateral EMS charges.

Hypothetical: The rates and discount amounts are disclosed to the public.

Foreign postal operators obtain the information and use it to their advantage in negotiating bilateral EMS charges with the foreign postal operators that are senders or receivers of the Instruments in an effort to lower the rates charged for delivery of EMS in the those countries. Alternatively, competitors use the pricing information to develop competing products.

Harm: Competitors could use the knowledge that the Postal Service has entered into arrangements for discounted EMS rates with certain foreign postal operators to the Postal Service's detriment when negotiating business arrangements with shippers in those countries.

Hypothetical: The identity of the countries with which the Postal Service has entered into arrangements for discounted EMS rates is released to the Public. Another expedited delivery service's employee monitors the filing of this information and passes the information along to its sales and marketing functions. The expedited delivery service determines that those countries provide a strategic market for increased competition, and then advertises itself to those countries' postal operators as offering better rates and performance thresholds than the Postal Service.

**(6) The extent of protection from public disclosure deemed to be necessary;**

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international expedited and parcels products (including private sector integrators), as well as their consultants and attorneys. Additionally, the Postal Service believes that, except for foreign postal operators that already have access to this information, actual or potential customers of the Postal Service for products related to inbound EMS and Outbound Express Mail International, or similar products, should not be provided access to the non-public materials.

**(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless

the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

**(8) Any other factors or reasons relevant to support the application.**

None.

***Conclusion***

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.



# **EMS Standard Agreement**

## EMS Standard Agreement on the international exchange of EMS items between EMS postal operators

### Content

Article 1	Purpose of the Agreement	4
Article 2	Definitions	4
Article 3	Bilateral agreements	4
Article 4	Revision of the Agreement	5
Article 5	Eligibility	5
Article 6	EMS operators' responsibilities	5
Article 7	EMS Operational Guide	5
Article 8	Service standards	5
Article 9	Accountability for loss or damage	6
Article 10	Prohibitions	6
Article 11	Limits of weight and size	6
Article 12	Treatment of items wrongly accepted items	7
Article 13	Items arriving out of course and to be redirected	7
Article 14	Undeliverable items	7
Article 15	Inquiries	7
Article 16	Reporting requirements	8
Article 17	Quality control and improvement	8
Article 18	Delivery payment systems and rates	8
Article 19	Accounting and settlement	9
Article 20	Charges and fees to be collected from the addressee	9
Article 21	Protection of EMS items	9
Article 22	Data protection	9
Article 23	Delivery irregularities	9
Article 24	Subcontracting	10
Article 25	Emergencies	10
Article 26	Suspension of Agreement	10
Article 27	Application of the UPU Convention	11
Article 28	Detailed procedures	11
Article 29	Additional rules and regulations	11
Article 30	Entire Agreement	11
Article 31	Arbitration	11
Article 32	Entry into force and duration	11
Article 33	Failure to comply with Agreement	11
Article 34	Nature of Agreement	12
Article 35	Notice Concerning U.S. Postal Service Regulatory Filings	12
Attachment 2: EMS Standard Agreement – Bilateral Agreement Signatory Page		14
Table – Differences applied and article references		15

## **Preamble**

The list of EMS operators published on the EMS Cooperative website ([www.ems.post](http://www.ems.post)) have adopted this Agreement and its Procedures as the basis for the exchange of EMS items between EMS operators in accordance with the Letter Post Regulations – Section L – Article 14 – item 1.2. This Agreement for the exchange of EMS items, accepted by all EMS Cooperative members and those non-members which are signatories to it, shall normally form the legal basis for the exchange of EMS items between the signatories, without any further requirement (except as provided in article 3 below).

## **Article 1**

### **Purpose of the Agreement**

The purpose of this Agreement is to establish the terms and conditions, including detailed procedures, which shall entirely govern the exchange of EMS items between its signatory parties (list of signatories published on the EMS Cooperative website ([www.ems.post](http://www.ems.post))).

## **Article 2**

### **Definitions**

As used herein, the following terms shall have the indicated meanings:

- A. "EMS items" means mail items as defined by the Letter Post Regulations – Section L, article 14.1.2. An EMS item may contain documents and/or merchandise.
- B. "EMS operator" means the entity authorized by a UPU member country to provide EMS service in its territory. "Origin operator" is used in the Agreement to designate an EMS operator which has tendered an item or dispatch to another operator for delivery. "Delivery operator" is used in the Agreement to designate an EMS operator which has accepted an EMS item or dispatch from another operator for delivery.
- C. "Convention" means the Universal Postal Convention adopted from time to time by the Congress of the Universal Postal Union
- D. "Procedures" means those articles setting out procedures and other information relevant to the implementation of this Agreement by EMS operators (i.e. articles 2.1 to 16 of the Procedures).
- E. "Receptacle" means a bag, sack, container or other device in which EMS items are enclosed.
- F. "Dispatch" means one or more receptacles containing EMS items tendered collectively by the origin operator to the delivery operator.
- G. "Rugby system for international inquiries" means the Internet-based system used by EMS Cooperative members to make inquiries concerning the status of EMS items.
- H. "EMS Pay-for-Performance Plan" means the plan used by EMS Cooperative members to link quality of service with payment.
- I. "Force majeure" means the force majeure rules as established by the EMS Cooperative.

## **Article 3**

### **Bilateral agreements**

- A. Should any EMS operator which is a signatory to this agreement wish – for legal, regulatory or commercial reasons – to formally base the exchange of international EMS items on bilateral agreements/contracts with certain other signatories, it may do so provided that any such bilateral agreements are as far as possible in the standard form specified in Attachment 2 to this Agreement in order to ensure that all international exchanges of EMS items between the signatories to this Agreement are entirely based on its articles and procedures.
- B. Signatories to this Agreement should also – as far as possible – use the concise standard bilateral agreement specified in Attachment 2 as the basis for the exchange of EMS items with non-signatories

to this agreement with the aim of maximizing the coverage of the standardized EMS service provided in accordance with the terms of this Agreement.

- C. Any proposed bilateral agreements on EMS between signatories to this Agreement should be notified to the EMS Unit, which should be informed of any provisions of such agreements which are different from or additional to those included in this Agreement and its Procedures.

#### **Article 4**

##### **Revision of the Agreement**

- A. The EMS Cooperative, as the structure charged initially by 1999 Beijing Congress resolution C 83/1999 "*to assume full competence for all operational, commercial, technical and economic matters concerning EMS*", and confirmed by Nairobi Congress resolution C 51/2008, may make additions or amendments to this Agreement and its Procedures through its annual General Assembly or in other ways prescribed in the Statutes of the EMS Cooperative.
- B. Such changes shall normally become effective on the first day of the calendar year following their adoption by the Cooperative.
- C. Any signatory to this Agreement which finds that it is unable to implement or to comply with the amended Agreement may withdraw from the date of the implementation of the changes. Advance notice of its intention to withdraw from the Agreement should normally be provided by the operator concerned to the EMS Unit at least one month beforehand.

#### **Article 5**

##### **Eligibility**

Any EMS operator which provides an inward and/or outward international EMS service shall be eligible to be a signatory to this Agreement, provided that it fulfils the following requirements:

- i In the case of an EMS operator providing an outward international EMS service, use of the UPU's standard EMS identifier and barcode and the EMS logo on all its outward EMS items.
- ii Provision to the EMS Unit up-to-date entry for the EMS Operational Guide and maintenance thereof.
- iii Possession and continuous operation of an EMS tracking system.

#### **Article 6**

##### **EMS operators' responsibilities**

Both origin and delivery operators shall faithfully perform each of the tasks assigned to them in the Agreement and its Procedures.

#### **Article 7**

##### **EMS Operational Guide**

All EMS operators shall regularly furnish and keep up to date all information required by the EMS Unit for their entries in the EMS Operational Guide.

#### **Article 8**

##### **Service standards**

- A. Delivery operators shall establish a scheduled pattern of service for inward EMS items, on the basis of delivery zones and location indicators (as defined in article 3.9 of the Procedures), and shall publish EMS delivery standards for incoming EMS dispatches in the EMS Operational Guide for each of their designated EMS offices of exchange.

- B. The pattern of service established by delivery operators, and the associated delivery standards published in the EMS Operational Guide, are to be considered as a minimum and the delivery operator shall endeavour to improve them whenever possible.
- C. Updated standards shall be regularly submitted by the delivery operator to the EMS Unit of the International Bureau for publication in the EMS Operational Guide.

**Article 9** (omitted)

**Article 10**  
**Prohibitions**

- A. The parties acknowledge that, in accordance with Article RL 251 of the UPU Letter Post Regulations, to which their countries are parties, certain provisions of the UPU Convention concerning prohibitions provide limitations on the insertion of articles in EMS items.
- B. Each delivery operator shall communicate to the UPU International Bureau, for publication in the UPU List of Prohibited Articles, IB circulars or the EMS Operational Guide, necessary information concerning customs or other regulations affecting inward EMS items as well as prohibitions or restrictions governing the entry of postal items in its service.
- C. Origin operators shall inform customers of prohibitions applicable to the insertion of articles in EMS items as provided for in the UPU Convention and List of Prohibited Articles, and by the legislation of the country of origin and of destination.
- D. Origin operators shall inform EMS customers that it is prohibited to enclose coins, banknotes, currency notes or securities of any kind payable to the bearer, travellers' cheques, platinum, gold or silver, precious stones, jewels or other valuable articles in uninsured EMS items. Radioactive materials, perishable biological substances and infectious substances defined in the UPU Convention shall not be admitted in the EMS service.

**Article 11**  
**Limits of weight and size**

- A. EMS items shall be admitted up to a maximum weight of 30 kilogrammes. In addition, EMS items shall not normally exceed 1.50 metres for any one dimension or three metres for the sum of the length and the greatest circumference measured in a direction other than length.
- B. The exchange of EMS items whose individual weight exceeds 30 kilogrammes shall be optional, at the discretion of delivery operators, with a maximum weight of 50 kilogrammes.
- C. Any delivery operator which does not apply the standards in article 11A, or which is willing to accept oversize items or overweight items as provided for in article 11B, shall notify the EMS Unit of the UPU International Bureau, for publication in the EMS Operational Guide, of the size and weight limits it applies for inbound EMS items.



**Article 12****Treatment of items wrongly accepted**

- A. When an item containing an article prohibited under article 10 has been wrongly admitted to the post, the prohibited article shall be dealt with according to the legislation of the country of the operator establishing its presence.
- B. When the weight or the dimensions of an item exceed the limits defined in article 11 and the regulations of the delivery operator do not permit delivery, it shall be treated as an undeliverable item and the procedures specified in article 3.6 of the Procedures shall be applied. If, however, the regulations of the delivery operator do permit the delivery of EMS items exceeding the weight or size limits defined in article 11, the item should be delivered to the addressee. In such cases, the delivery operator shall be entitled to claim a supplementary charge, the amount of which shall be published in the EMS Operational Guide. This amount shall not exceed 50% of the normal delivery payment rate.
- C. When a wrongly admitted item is neither delivered to the addressee nor returned to origin, the origin operator shall be informed how the item was dealt with and of the restriction or prohibition which required such treatment. The E2 Verification Note (Annex 3 of the Procedures) may be used for this purpose. Additional charges incurred by the delivery operator in the treatment of such items shall be borne by the origin operator.

**Article 13****Items arriving out of course and to be redirected**

- A. EMS items arriving out of course shall be redirected to their final destination by the same route as is used by the transit operator to send its own items. The transport costs shall be reimbursed by the origin operator in accordance with the Procedures.
- B. For forwarding items misdirected to the delivery operator by the origin operator, the origin operator shall pay the delivery operator the cost of transportation.
- C. Neither the delivery operator nor the origin operator shall be responsible for the cost of returning items sent in error by the sender, or items misdirected by the sender to the addressee. Any costs associated with the return of such items shall normally be the responsibility of the sender unless the addressee opts to pay for their return.

**Article 14****Undeliverable items**

Undeliverable items shall be treated by delivery operators in accordance with article 3.6.4 of the Procedures and disposed of accordingly.

**Article 15****Inquiries**

- A. Delivery operators shall make suitable arrangements for the prompt treatment of inquiries relating to inward EMS items from origin operators, senders or addressees, in accordance with article 10.3 of the Procedures.
- B. Inquiries shall be accepted only within a period of four months from the date of posting of the item.
- C. This article does not authorize routine requests for confirmation of delivery.

## **Article 16**

### **Reporting requirements**

- A. All delivery operators which have tracking systems shall record in electronic form and transmit to the origin operator, via the GXS or POST\*Net networks, the tracking event data specified in the Procedures at the required times.
- B. EMS operators shall make event data transmitted available to a third party designated by the EMS Cooperative for the purpose of monitoring quality of service performance and the quality of the event data.
- C. All EMS operators shall agree to receive all tracking event messages transmitted to them by all other parties to this Agreement.
- D. The format and message syntax to be used in the exchange of EMS event data between operators shall be those specified in article 9.1 (9.1.1 to 9.1.7 of the Procedures).

## **Article 17**

### **Quality control and improvement**

- A. EMS operators shall make every possible effort to improve their achievement of service standards, including maintaining a quality control programme.
- B. Delivery operators shall cooperate with origin operators when they test the quality of the service rendered by the delivery operator.
- C. All parties to this Agreement are jointly committed to ensuring that the required service levels are provided in accordance with the terms and conditions of the Agreement and its Procedures. Furthermore, the parties are committed to developing the service jointly where possible with the goal of improving the quality of service, reducing costs incurred in providing the service and any other process improvements to the mutual benefit of the parties.

## **Article 18**

### **Delivery payment systems and rates**

- A. Terminal dues and internal air conveyance as defined in the Universal Postal Convention shall not apply to EMS items.
- B. Each delivery operator shall establish a delivery payment system (based on the gross imbalance of EMS traffic), and shall publish a unique rate for EMS items (or separate unique rates according to category for documents and merchandise, respectively) corresponding to the costs of the service and to the principles adopted by the EMS Cooperative as the basis for inter-operator charging. These rates shall be notified to the EMS Unit for publication in the EMS Operational Guide.
- C. Each delivery operator may vary its delivery payment rate or rates when such a variation is necessary owing to a change in the cost of services. A delivery operator may also introduce changes in its delivery payment system, provided that such changes conform to the principles adopted by the EMS Cooperative for inter-operator charging.
- D. Any such changes in delivery payment rates or systems may only be implemented by delivery operators under the following conditions:
  - i Any proposed increase shall be notified to the EMS Unit by 31 August in the year preceding its introduction, so that the EMS Unit may notify operators of all such changes by 30 September.
  - ii Higher rates or new payment systems may only be implemented on the first day of the year (1 January) following their timely notification to the EMS Unit.
  - iii Any proposed decrease can be notified to the EMS Unit at any time and will be introduced the first day of the calendar quarter following notification.

## **Article 19**

### **Accounting and settlement**

All EMS operators shall give preference to apply the accounting rules and procedures for inter-operator settlements prescribed in the EMS Pay-for-performance Plan (article 12.1 of the Procedures) and published on the EMS Cooperative website ([www.ems.post](http://www.ems.post)).

In the case that the pay-for-performance cannot be applied, EMS operators shall apply the accounting rules and procedures for inter-operator settlements prescribed in articles 12.2 and 12.3 of the Procedures.

## **Article 20**

### **Charges and fees to be collected from the addressee**

- A. Each delivery operator shall be authorized to collect from the addressee the customs duty and any other applicable non-postal fees payable on each item it delivers, and to charge for the collection of such fees. Delivery operators shall indicate what kind of charges they will collect from addressees prior to the conclusion of this Agreement. Any standard non-postal fees or postal charges for collection should be notified in the EMS Operational Guide.
- B. EMS operators may collect only the rates, charges, and fees provided for in this Agreement and published in the EMS Operational Guide.

## **Article 21**

### **Protection of EMS items**

- A. The delivery operator shall protect and safeguard EMS items from loss, depredation or damage while they are in its custody or control. The delivery operator shall prevent unauthorized persons from having access to EMS items. The delivery operator shall transport EMS items on the ground and in the air in securely closed containers, or vehicles.
- B. The delivery operator shall, except as otherwise specifically required by law, preserve the secrecy of correspondence contained in EMS items.

## **Article 22**

### **Data protection**

The delivery operator shall not disclose or use, except in the performance of this Agreement or as required by law, the name or address of any EMS sender or addressee obtained in the performance of this Agreement without the written approval of the origin operator.

## **Article 23**

### **Delivery irregularities**

Except as otherwise provided in this Agreement, the following actions or failures to act by the delivery operator are irregularities under this Agreement:

#### *i Refusal*

Refusal or failure to accept EMS items as specified in this Agreement.

#### *ii Misdirection*

Misdirecting an EMS item to a destination other than that to which it is addressed, unless the misdirection is the result of following directions placed on a receptacle by the origin operator.

#### *iii Delayed delivery*

Failure to tender EMS items to the addressee for delivery in accordance with the measurable service standards defined in the EMS Operational Guide and validated by the EMS Cooperative.



iv *Failure to protect*

Failure to protect and safeguard EMS items from depredation or other hazards while in the delivery operator's custody or control. This includes failure to prevent unauthorized persons from having access to EMS items, and failure to transport EMS items on the ground or in the air in securely closed containers or other vehicles.

v *Failure to report*

Failure to transmit tracking or delivery status data as required by article 16 of this Agreement and articles 3.7 and 9.2 of the Procedures, unless it is impossible to transmit such data for reasons beyond the control of the delivery operator.

vi *Failure to respond*

Failure to respond to inquiries from origin operators within the period of time specified in article 10.3 of the Procedures.

vii *Failure to return*

Failure to promptly return undeliverable items within three days after the expiry of the holding period as specified in article 3.6.4 of the Procedures.

**Article 24****Subcontracting**

- A. The delivery operator may subcontract work associated with customs clearance, transport or delivery of EMS items provided that the terms and conditions of this Agreement and its Procedures are fully observed and fulfilled.
- B. Payment of any subcontractor shall be the sole responsibility of the delivery operator.

**Article 25****Emergencies**

Nothing herein shall prohibit the delivery operator from taking temporary measures to maintain service in emergencies. In such circumstances, notification of the nature of the emergency liable to disrupt EMS service and details of any material measures taken by the delivery operator shall be notified to the EMS Unit by telephone, e-mail or fax within 24 hours of such action being taken. The probable duration of the emergency should also be advised where possible. The same procedure shall be applied when the suspended EMS services are resumed after the conclusion of the emergency.

**Article 26****Suspension of Agreement**

- A. If a delivery operator is unable to perform this Agreement in whole or in part, for reasons beyond its control, such as force majeure or acts of governments or governmental agencies (does not include disputes between the delivery operator and airport authorities or noise abatement restrictions), the Agreement may be suspended by the delivery operator, in whole or in part, for such reasonable time as it takes for service to be restored. Any other article of this Agreement notwithstanding, an origin operator may obtain alternative services from a third party during periods when a delivery operator is unable to perform this Agreement (see also C below).
- B. Any delivery operator suspending the Agreement in such circumstances shall inform other EMS operators concerned and the EMS Unit of such suspension and of the resumption of service within 24 hours of such action being taken. Notification should be by telephone, e-mail or fax.
- C. An origin operator may also at any time obtain alternative services from a third party when – in its opinion – a delivery operator is incapable of providing an acceptable EMS delivery service, either as a result of inadequate published standards or pattern of service, or of delivery irregularities as specified in article 23 above. In such cases, an origin operator shall immediately inform the EMS Unit and the

delivery operator of the action taken and of the reasons for it, so that the EMS Board may consider whether action under article 33 of the Agreement is required.

#### **Article 27**

##### **Application of the UPU Convention**

The Parties acknowledge that, in accordance with Article RL 251 of the UPU Letter Post Regulations, to which their countries are parties, aspects of EMS not expressly governed by this Agreement or its regulations are subject to the appropriate provisions of the Acts of the Universal Postal Union.

#### **Article 28**

##### **Detailed Procedures**

Details of implementation of this Agreement shall be governed by its Procedures.

#### **Article 29**

##### **Additional rules and regulations**

Each EMS operator shall be authorized to adopt implementing rules and regulations for its internal operation of the service not inconsistent with this Agreement or its Procedures.

#### **Article 30**

##### **Entire Agreement**

This Agreement shall constitute the entire Agreement between the parties for the provision of this service. Any prior understanding or representation between signatories to this Agreement, which precedes the date of this Agreement and concerns the provision of this service (to include any commercial law agreements between the parties, but not any agreements purporting to be executed under international law) shall not be binding upon either party except to the extent incorporated in this Agreement.

#### **Article 31**

##### **Arbitration**

Any dispute arising between signatory EMS operators concerning the interpretation or application of this Agreement and its Procedures which cannot be resolved by the operators concerned to their mutual satisfaction shall be settled by arbitration. The arbitrators shall be two nominated members of the EMS Cooperative Board (excluding any Board member whose EMS operator may be a party to the dispute) and the Head of the EMS Unit, assisted by the UPU Legal Advisor in an advisory capacity (non-voting).

#### **Article 32**

##### **Entry into force and duration**

This Agreement shall enter into force on the date mutually agreed upon by the EMS operators, after it is signed by the authorized representatives of the operators.

Any EMS operator may withdraw from the Agreement by providing six months' notice to the EMS Unit.

#### **Article 33**

##### **Failure to comply with Agreement**

- A. Operators which have signed this Agreement, but which subsequently fail to meet the eligibility criteria set out in article 5 within the time limits specified – or which have ceased for a period of at least three months to meet these criteria – will be asked by the EMS Unit to provide reasons for this failure and a

guarantee to remedy the deficiencies identified within a specified time-span (not exceeding two months).

- B. Delivery operators which are consistently responsible for irregularities as specified in article 23 of the Agreement may also be required by the EMS Unit to explain the reasons for such failures.
- C. The case of any operator failing to comply with the terms of the Agreement with regard to eligibility (A above), or responsible for repeated irregularities (B above), shall be drawn to the attention of the EMS Cooperative Board by the EMS Unit for consideration at its next meeting.
- D. In such cases, the Board shall decide:
  - i whether the operator in question should continue to be considered an eligible signatory to the Agreement;
  - ii that, where appropriate, a solicitation should be launched by the EMS Cooperative to find an EMS delivery partner able to provide the facilities and standards of service require.

#### **Article 34 Nature of Agreement**

Both signatories acknowledge that this instrument sets out the terms and conditions of a mail exchange arrangement and is not an agreement entered into or subject to international law. This Agreement is only binding on the signatories and it is not binding on their governments.

#### **Article 35 Notice Concerning U.S. Postal Service Regulatory Filings**

The Parties acknowledge that as part of ongoing legal transparency or data filing requirements, or as part of any requirements to secure regulatory approval of this Agreement, the Agreement and any supporting documentation related to it may be filed with the U.S. Postal Regulatory Commission ("Commission"), which may establish a docketed proceeding in certain contexts for consideration of the Agreement or information related to the Agreement. The Party executing this agreement other than the U.S. Postal Service (hereinafter the "counterparty") authorizes the U.S. Postal Service to determine the scope of information that must be made publicly available under U.S. law in any Commission docketed proceeding. The counterparty further understands that any unredacted portion of the Agreement or supporting information will be available on the Commission's public website, [www.prc.gov](http://www.prc.gov). In addition, the U.S. Postal Service may file information in connection with this instrument (including revenue, cost, or volume data) in other Commission dockets. The counterparty has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22 on the Commission's website: [www.prc.gov/Docs/63/63467/Order225.pdf](http://www.prc.gov/Docs/63/63467/Order225.pdf). At the request of the counterparty, the U.S. Postal Service will notify the counterparty of any docket number of the Commission proceeding if one is assigned.

**Attachment 2****EMS Standard Agreement – Bilateral Agreement Signatory Page**

The undersigned EMS operators A and B hereby undertake to adopt the EMS Standard Agreement and its Procedures as the basis for the exchange of EMS items between EMS operators in accordance with the Letter Post Regulations – Section L – Article 14 of the Universal Postal Convention (Nairobi 2008).

However, as provided in article 3 of the Agreement, the EMS operator intends to formally base the exchange of international EMS items with other signatories (and non-signatories) on bilateral agreements/contracts, which shall, as far as possible, be in the standard form specified in the articles below. Any such bilateral agreements should be notified to the EMS Unit (see table below), as specified in article 3C of the Agreement.

*Article 1: Purpose of the Agreement*

The purpose of the Agreement shall be to establish mutually agreed terms and conditions for the exchange of EMS items between the undersigned EMS operators A and B.

*Article 2: Operation of the EMS service*

The exchange of EMS items between the contracting parties to this Agreement shall take place in accordance with the terms of the EMS Cooperative's Standard Agreement and its Procedures, as adopted and amended from time to time by the EMS Cooperative. The contracting parties agree to implement EMS service between them on the basis of the conditions established in that Agreement, and to apply the standards set out or referred to therein.

*Article 3: Entry into force and duration*

This Agreement shall enter into force on the date mutually agreed upon by the undersigned EMS operators A and B and shall remain in force until further notice.



**Table – Differences applied and article references**

Indicate below which articles of the EMS Standard Agreement provide the reference base for the bilateral agreement and add a description of the bilateral change agreed:

Article reference in the EMS Standard Agreement	Description of agreed change related to the EMS Standard Agreement to be applied on bilateral basis between the EMS Operators A and B signatories of the EMS Standard Agreement
9	This Article and all related Regulations concerning liability do not apply.
10 A	The parties acknowledge that, in accordance with Article RL 251 of the UPU Letter Post Regulations, to which their countries are parties, certain provisions of the UPU Convention concerning prohibitions provide limitations on the insertion of articles in EMS items.
27	The Parties acknowledge that, in accordance with Article RL 251 of the UPU Letter Post Regulations, to which their countries are parties, aspects of EMS not expressly governed by this Agreement or its regulations are subject to the appropriate provisions of the Acts of the Universal Postal Union.
30	This Agreement shall constitute the entire Agreement between the parties for the provision of this service. Any prior understanding or representation between signatories to this Agreement, which precedes the date of this Agreement and concerns the provision of this service (to include any commercial law agreements between the parties, but not any agreements purporting to be executed under international law) shall not be binding upon either party except to the extent incorporated in this Agreement.
33	Add Article 33: Both signatories acknowledge that this instrument sets out the terms and conditions of a mail exchange arrangement and is not an agreement entered into or subject to international law. This Agreement is only binding on the signatories and it is not binding on their governments.
34	Add Article 34: The Parties acknowledge that as part of ongoing legal transparency or data filing requirements, or as part of any requirements to secure regulatory approval of this Agreement, the Agreement and any supporting documentation related to it may be filed with the U.S. Postal Regulatory Commission ("Commission"), which may establish a docketed proceeding in certain contexts for consideration of the Agreement or information related to the Agreement. The Party executing this agreement other than the U.S. Postal Service (hereinafter the "counterparty") authorizes the U.S. Postal Service to determine the scope of information that must be made publicly available under U.S. law in any Commission docketed proceeding. The counterparty further understands that any unredacted portion of the Agreement or supporting information will be available on the Commission's public website, <a href="http://www.prc.gov">www.prc.gov</a> . In addition, the U.S. Postal Service may file information in connection with this instrument (including revenue, cost, or volume data) in other Commission dockets. The counterparty has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22 on the Commission's website: <a href="http://www.prc.gov/Docs/63/63467/Order225.pdf">www.prc.gov/Docs/63/63467/Order225.pdf</a> . At the request of the counterparty, the U.S. Postal Service will notify the counterparty of any docket number of the Commission proceeding if one is assigned.



**EMS operators entering the Agreement:**

A. EMS operator: United States Postal Service  
 Signature of authorized official: Lea Emerson  
 Title: Executive Director, International Postal Affairs  
 Date: June 25, 2015

B. EMS operator:  
 Signature of authorized official:  
 Title:  
 Date: July 3, 2015

**Date of application**

Indicate below the date for your application of the EMS Standard Agreement:

Day	Month	Year
01	07	2015

**Please send a copy to:**

EMS Unit  
 UPU International Bureau  
 P.O. Box 312  
 3000 BERNE 15  
 SWITZERLAND

Fax: +41 31 351 52 00  
 E-mail: EMS.Unit@upu.int




Pay-for-performance Partners' Agreement Form

EMS Operators entering the agreement:

United States Postal Service, USA



Date of Implementation: July 1, 2015

Year/ Quarter	% delivery charge paid for penalized items below threshold	Threshold
2015/3  onwards		

I, as a representative of , hereby agree that my Administration will participate in the EMS Pay-for-performance Plan under the above-stated conditions.

Signature: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

Date: July 3, 2015

I, as a representative of United States Postal Service, hereby agree that my Administration will participate in the EMS Pay-for-performance Plan under the above-stated conditions.

Signature: \_\_\_\_\_



LEA EMERSON

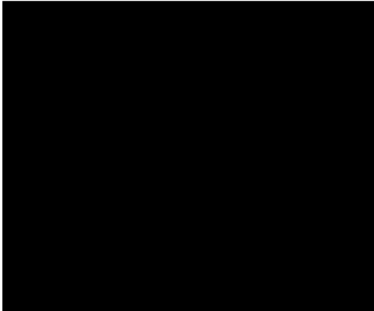
Executive Director, International Postal Affairs

Date: June 25, 2015

Please return to the EMS Unit:  
International Bureau of the UPU  
EMS Unit  
Case postale  
3000 Berne 15  
Switzerland  
FAX: + 41 31 351 52 00  
E-mail: EMSUnit@upu.int



June 25, 2015



The U.S. Postal Service has reviewed its EMS agreements and found that we do not have a current signed agreement with your administration. The proposed agreement enclosed is based on the EMS Standard Agreement as agreed by the UPU EMS Cooperative. We have noted the differences between our version and the Standard Agreement to help in your review. The changes represent certain language we need to have in our agreement given the regulatory environment in the United States. We understand that you have signed the EMS Standard Multilateral Agreement and while we recognize this as a basis, we need to sign this as a bilateral agreement.

It is our understanding that [REDACTED] would like to participate in the EMS Cooperative Pay-for-performance plan with the United States. As you may be aware, the U.S. Postal Service charges a per item plus per kilo charge for the delivery of EMS items to the United States. Therefore, we would like to extend our EMS Pay-for performance inbound delivery rate of [REDACTED] per item plus [REDACTED] SDR per kilo. As [REDACTED] announced that for designated operators applying a delivery fee of more than the published rate, the principle of reciprocity will apply. As our rate notified is higher than your notified EMS rate, please see below for 2015 reciprocal rates.

- [REDACTED]
- [REDACTED]

I am enclosing two signed copies of the EMS Standard Agreement and the EMS Pay-for-performance Partners' Agreement Form. Please retain one copy for your records and return one signed copy of each agreement to me at your earliest convenience.

Recognizing that the EMS Cooperative recommends that all members settle their accounts with their partners using the EMS Pay-for-performance plan, we wish to abide by this plan with each other too in support of the work of establishing a strong global EMS network.

If you have any questions about this effort, please contact Ms. Haley McKittrick at [haley.e.mckittrick@usps.gov](mailto:haley.e.mckittrick@usps.gov) so that we may move this work forward.

Sincerely,

A handwritten signature in blue ink that reads "Lea Emerson".

Lea Emerson

Enclosures